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A

Datuk Bandar Kuala Lumpur v Tan Yew Lai

B HIGH COURT (KUALA LUMPUR) — SUIT NO 24FC-34–01 OF 2014
ROSILAH YOP JC
26 FEBRUARY 2014

C *Local Government — Rates — Arrears of assessment — Application for order for sale of property by public auction to recover arrears — Notice of demand (Form E) demanding arrears served and posted — Whether procedures to claim arrears of rates payable had been complied with — Whether plaintiff had proven on balance of probabilities that Form E was served on defendant at last known address — Whether warrant of attachment included inventory of property — Whether application filed prematurely — Local Government Act 1976 ss 148 & 151*

D

The defendant was the registered owner of a property located in Kuala Lumpur ('the property'), which was within the jurisdiction of the Datuk Bandar Kuala Lumpur ('the plaintiff'). The defendant failed to pay the required rates of assessment incurred on the property as provided for in the Local Government Act 1976 ('the Act'). As the plaintiff's many reminders to the defendant to pay all arrears of assessments and fines owed to the plaintiff were also left unattended, the plaintiff issued a notice of demand in Form E under the Act ('the Form E') demanding the arrears of rates, which stood at RM4,266.90 as at 9 March 2012. The Form E was served and posted at the last address known to the defendant. The defendant failed to pay and the plaintiff issued a warrant of attachment in Form F under the Act ('the Form F') for the purpose of seizing any property belonging to the defendant, which was found in the property. This attempt to obtain payment of the rates also proved unsuccessful as the defendant's property was locked. Consequently the plaintiff posted a notice in Form H of the Act ('the Form H') at the property, demanding payment of arrears of rates amounting to RM4,286.90 within seven days and failing which the plaintiff would apply to auction the defendant's property. As the defendant failed to settle the arrears of assessments and fines, the plaintiff filed the present application pursuant to ss 146,148 and 151 of the Act and O 31 or O 83 r 1(2) of the Rules of Court 2012 for an order for the sale of the property by public auction to recover all sums due to the plaintiff.

E

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H

I **Held,** dismissing the application with no order as to costs:

(1) It is settled law that ss 148 and 151 of the Act should be read together. Section 148 of the Act that provides the procedures for the authorities to claims arrears of rates payable should be complied with by the plaintiff first before it could make an application for the auction of the property.

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As such, it was for the plaintiff to prove that it had issued the Form F or warrant of attachment in accordance with the proviso to s 148(1) of the Act ie that it had first served the Form E by post or delivered to the owner before the Form F was issued against the defendant. In its affidavit in support of its application the plaintiff had stated that the Form E was served on the defendant and that the picture of Form E was also posted at the last known address of the defendant as proof of delivery by posting. However, there was no evidence that the picture of Form E was posted at the last known address of the defendant. Since the court had doubts about the delivery of the Form E, the plaintiff had failed to prove on a balance of probabilities that the Form E was served on the defendant. According to s 148 of the Act, notice should be given and it should be stated in the Form E that the defendant had to pay the arrears within 15 days of the posting or delivery of the notice. In the present case there was an absence of evidence as to when the Form E was delivered and thus it was difficult to determine when the 15-day period would commence. The plaintiff had failed to comply with the provisions of s 148 of the Act and it was premature for it to file the present application (see paras 17, 19, 21–25 & 27).

(2) Section 148(2) of the Act further provided that the warrant of attachment should include an inventory of the property attached. However, there was no such inventory included in the present case. The plaintiff's submission that the property was unoccupied or vacant was unsupported by evidence and thus devoid of merit. The plaintiff had thus failed to comply with s 148(2) of the Act (see paras 28–29).

(3) From the affidavit evidence of the plaintiff, there was no evidence that any movable property belonging to the defendant had been attached for public auction pursuant to s 149 of the Act. The plaintiff failed to comply with the provisions of ss 148 and 149 of the Act, which should be read in conjunction with s 151 of the Act (see paras 33 & 38).

[Bahasa Malaysia summary

Defendan adalah pemilik berdaftar sebuah hartanah terletak di Kuala Lumpur ('hartanah tersebut'), yang mana berada di dalam bidang kuasa Datuk Bandar Kuala Lumpur ('plaintif'). Defendan gagal untuk membayar kadar taksiran yang dikenakan yang tertanggung ke atas harta itu sebagaimana yang diperuntukkan di dalam Akta Kerajaan Tempatan 1976 ('Akta'). Sebagaimana banyak peringatan plaintif kepada defendan untuk membayar semua tunggakan taksiran dan denda yang terhutang kepada plaintif juga tidak dilayan, plaintif mengeluarkan notis tuntutan dalam Borang E di bawah Akta ('Borang E') menuntut kadar tunggakan yang berjumlah RM4,266.90 pada 9 Mac 2012. Borang E telah diserahkan dan diposkan ke alamat terakhir defendan. Defendan gagal membayar dan plaintif mengeluarkan waran tahanan dalam Borang F di bawah Akta ('Borang F') bagi maksud menyita

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apa-apa harta yang dimiliki oleh defendan, yang ditemui di dalam hartanah itu. Percubaan untuk mendapatkan bayaran kadar juga terbukti tidak berjaya kerana hartanah defendan telah dikunci. Oleh itu plaintif telah menampal notis dalam Borang H Akta ('Borang H') di hartanah, menuntut pembayaran tunggakan taksiran berjumlah RM4,286.90 dalam masa tujuh hari dan sekiranya gagal plaintif akan memohon untuk melelong hartanah defendan tersebut. Memandangkan defendan gagal untuk menjelaskan tunggakan taksiran dan denda, plaintif telah memfailkan permohonan ini menurut ss 146, 148 dan 151 Akta dan A 31 atau A 83 k 1(2) Kaedah-Kaedah Mahkamah 2012 untuk suatu perintah bagi penjualan hartanah melalui lelongan awam untuk mendapatkan kembali semua wang yang perlu dibayar kepada plaintif.

Diputuskan, menolak permohonan itu dengan tiada perintah tentang kos:

(1) Adalah undang-undang tetap bahawa ss 148 dan 151 Akta hendaklah dibaca bersama-sama. Seksyen 148 Akta yang memperuntukan prosedur bagi pihak berkuasa untuk menuntut tunggakan taksiran yang perlu dibayar hendaklah dipatuhi oleh plaintif pertama sebelum ia boleh membuat permohonan bagi lelongan harta itu. Oleh itu, ia adalah untuk plaintif membuktikan bahawa ia telah mengeluarkan Borang F atau waran tahanan mengikut proviso kepada s 148(1) Akta iaitu bahawa ia telah terlebih dahulu mengeluarkan Borang E melalui pos atau diserahkan kepada pemilik sebelum Borang F dikeluarkan terhadap defendan. Dalam afidavit sokongan permohonan plaintif telah menyatakan bahawa Borang E telah disampaikan kepada defendan dan bahawa gambar Borang E telah juga diposkan di alamat terakhir defendan sebagai bukti penghantaran melalui pos. Walau bagaimanapun, tidak ada bukti bahawa gambar Borang E telah diposkan di alamat terakhir defendan. Oleh kerana mahkamah yang mempunyai keraguan tentang penghantaran Borang E, plaintif gagal membuktikan atas imbangan kebarangkalian bahawa Borang E telah disampaikan kepada defendan. Menurut s 148 Akta, notis perlu diberi dan ia perlu dinyatakan di dalam Borang E bahawa defendan perlu membayar tunggakan itu dalam masa 15 hari dari tarikh pengeposan atau penghantaran notis itu. Dalam kes ini tidak terdapat bukti tentang bilakah Borang E telah dihantar dan oleh itu ia adalah sukar untuk menentukan bila tempoh 15 hari itu akan bermula. Plaintif telah gagal untuk mematuhi peruntukan s 148 Akta dan ia adalah terlalu awal baginya untuk memfailkan permohonan ini (lihat perenggan 17, 19, 21–25 & 27).

(2) Seksyen 148(2) Akta selanjutnya memperuntukkan syarat bahawa waran tahanan hendaklah termasuk inventori harta yang ditahan itu. Walau bagaimanapun, tidak ada apa-apa inventori dimasukkan dalam kes ini. Hujahan plaintif bahawa harta itu tidak diduduki atau kosong adalah

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tidak disokong oleh keterangan dan oleh itu tidak mempunyai merit. Plaintif dengan itu telah tidak mematuhi s 148(2) Akta (lihat perenggan 28–29).

(3) Dari keterangan afidavit plaintif, tidak ada keterangan bahawa apa-apa harta alih kepunyaan defendan telah dilampirkan untuk lelongan awam menurut s 149 Akta. Plaintif tidak mematuhi peruntukan ss 148 dan 149 Akta, yang perlu dibaca bersama dengan s 151 Akta (lihat perenggan 33 & 38).]

Notes

For cases on arrears of assessment, see 10 *Mallal's Digest* (4th Ed, 2013 Reissue) paras 155–168.

Cases referred to

Ke Ka Tong Sdn Bhd v Datuk Bandar Kuala Lumpur [2008] 3 MLJ 234; [2008] 2 CLJ 225, CA (refd)

Legislation referred to

Local Government Act 1976 ss 146, 148, 148(1), (2), 149, 151, 151(1), First Schedule, Forms E, F, H
Rules of Court 2012 O 31, O 83 r 1(2)

Dayang Noor Ailani bt Puyungan Razali (Zulpadi & Edham) for the plaintiff.
Tan Yew Lai in person.

Rosilah Yop JC:

ENCLOSURE 1

[1] The plaintiff's application by way of the originating summons for an order for the sale of property by public auction against the defendant to pay all arrears of assessments, fines and costs owed by the defendant to the plaintiff. The plaintiff's application is based on the provisions of ss 146, 148, 151 of the Local Government Act 1976 and O 31 and/or O 83 r 1(2) of the Rules of Court 2012. The defendant was not present at the hearing of the originating summons though encl 1 was served on him.

THE PLAINTIFF'S CASE

[2] The defendant is the registered owner of the property located at 325, Jalan Taman Tan Yew Lai, Taman Tan Yew Lai, 58200 Kuala Lumpur ('the property').

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[3] The property is and being under the local authority area of Kuala Lumpur ie the plaintiff in this action.

[4] As the property is within the jurisdiction of the plaintiff, the law is clear that the defendant shall pay the rates on the plaintiff's property as provided for in the Local Government Act 1976.

[5] However, the defendant has failed to pay the required rates to the plaintiff, despite several claims have been made.

[6] Following the breach, the plaintiff had issued a notice of demand in Form E under the Local Government Act 1976 dated 14 March 2012 which was served and posted at the last address known to the defendant demanding the arrears of rates as at 9 March 2012 of RM4,266.90.

[7] However, the defendant has failed to pay the arrears rate. Further, the plaintiff has issued a warrant of attachment in Form F dated 17 August 2012 under the Local Government Act 1976 for the purpose of seizing any property belonging to the defendant which is found in the property. However, the plaintiff's attempt to obtain payment of rates by seizure was unsuccessful as the defendant's property was locked.

[8] In default of settling the arrears amount, the plaintiff posted a notice in Form H at the said property as provided by the Local Government Act 1976 where the plaintiff claimed the amount in arrears at the rate of RM4,286.90 within seven days and if the defendant fails to make payment of the outstanding as claimed, the plaintiff will apply to the court to auction the defendant's property.

[9] Following the failure of the defendant, the plaintiff by his solicitor's letter, Messrs Zulpadli & Edham, sent a notice of demand dated 12 October 2013 for the arrears by way of registered post demanding payment for the sum owed as at 6 August 2013 for RM4,639.50.

[10] In this action, the assessment means the first charge on the holdings in respect of which they are assessed to be paid by the defendant to the plaintiff.

[11] The amount owed by the defendant to the plaintiff as at 6 August 2013 is RM4,639.50.

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THE PLAINTIFF'S SUBMISSION

[12] The plaintiff's application is based on the provisions of ss 146, 148, 151 of the Local Government Act 1976 and O 31 and/or O 83 r 1(2) of the Rules of Court 2012.

[13] In this action, the assessment means the first charge to be paid by the defendant to the plaintiff.

[14] The plaintiff has complied with s 148 of the Local Government Act 1976 in issuance of Forms E, F and H.

[15] The defendant failed to pay all arrears of assessments, fines and costs owed to the plaintiff.

[16] The plaintiff proceeded his action by way of an application to conduct a public auction for the sale of the defendant's property pursuant to O 31 of the Rules of Court 2012 for the recovery of all sums due.

OPINION OF THE COURT

[17] Section 148 of the Local Government Act ('the LGA') provides procedures for the local authorities to claim arrears of rates payable by the defendant. Section 148 proceedings for recovery of an arrear.

> (1) For the recovery of an arrear the local authority may issue a warrant of attachment in Form F of the First Schedule hereto and may seize by virtue thereof any movable property, belonging to the owner or occupier liable to pay the same, which is found within the local authority area and may also seize any movable property, to whomsoever belonging, which is found on the holding in respect of which the arrear is due:
>
> Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him to pay the arrear within fifteen days of the posting or delivery.
>
> (2) The warrant shall be executed by an officer of the local authority who shall make an inventory of the property attached thereunder, and shall at the same time give notice in Form G of the First Schedule hereto, to the person in possession of the property at the time of attachment:
>
> Provided that where in the opinion of the officer executing the warrant the value of the moveable property to be attached is of a lesser value than the arrear to be recovered or there is no moveable property to be attached as in the case of a holding which is vacant or unoccupied no such inventory need be made and in such a case he shall affix a notice in Form H of the First Schedule hereto on some conspicuous

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part of the holding or any one of the holding in respect of which the arrear is due to the effect that procedure for the recovery shall be instituted under section 151.

(3) Such officer may break open in the daytime any house or building for the purpose of effecting such attachment.

(4) The fee for a warrant of attachment shall be of such amount as the local authority may fix from time to time and shall be costs of the attachment.

[18] In the Court of Appeal case, *Ke Ka Tong Sdn Bhd v Datuk Bandar Kuala Lumpur* [2008] 3 MLJ 234; [2008] 2 CLJ 225, the court had decided on ss 148 and 151 of the Local Government Act 1976 as follows:

In view of the words used in ss 148 and 151 of the Act, the two sections should be read together if the intention of the Legislature is to be given any effect. It is for the local authority to show that it has exhausted all the mechanisms as provided for in s 148 of the Act, including the service of Form H given under the proviso of sub-s (2) of s 148, when making an application under s 151 of the Act. Contrary to what was contended before this court, ss 148 or 151 does not impose upon the appellant or the debtors of the local authority the duty to ensure that the local authority has done all that is required to be done under s 148 of the Act. That is not to say that the local authority is not entitled to rely on other avenues to recover the arrears other than s 148 of the Act. That explains the use of the word 'may' in s 148. However, if it is inclined to rely on s 151 of the Act, then the provisions of s 148 must first be observed.

[19] Based on this authority, ss 148 and 151 should be read together. The provision of s 148 must first be complied with by the plaintiff.

[20] The plaintiff has issued a warrant of attachment in Form F dated 17 August 2012 (exh NZ2, affidavit in support of the plaintiff) based on the provision of s 148(1) of the LGA to the defendant. Section 148(1) provides that:

(1) For the recovery of an arrear the local authority may issue a warrant of attachment in Form F of the First Schedule hereto and may seize by virtue thereof any movable property, belonging to the owner or occupier liable to pay the same, which is found within the local authority area and may also seize any movable property, to whomsoever belonging, which is found on the holding in respect of which the arrear is due:

Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him to pay the arrear within fifteen days of the posting or delivery.

[21] Since the plaintiff has issued Form F to the defendant in accordance with the proviso to s 148(1), hence the local authority (the plaintiff) must

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prove that they have served Form E in the First Schedule of the LGA by posted or served it to the defendant at his last known address, requesting him to pay the arrears within 15 days of the posting or delivery of the notice (Form E) before the warrant of attachment can be issued against the defendant.

[22] From the affidavit in support of the plaintiff shows that, Form E which was dated 14 March 2012 was served on the defendant and was also posted at the last known address of the defendant.

[23] In para 8 of the plaintiff's affidavit in support, stated that the picture of Form E was posted at the last known address of the defendant (exhibited as NZ1) as proof of delivery by posting at the last address of the defendant. I have scrutinising exh NZ1 and I found that there was no evidence that the picture of Form E was posted at the last known address of the defendant. It was not stated in the affidavit when was Form E served on the defendant. There was no evidence as to the date of service.

[24] Thus, the court has doubts about the delivery of Form E. Since the court has doubts about the delivery of Form E, then I opine that on the balance of probability the plaintiff failed to prove that Form E was served on the defendant.

[25] According to the provision of s 148, notice must be given and must be stated in Form E that the defendant must pay the arrears within 15 days of the posting or delivery of the said notice. In the absence of evidence as to when the delivery of Form E to the defendant and the period beginning 15 days to make payment (as provided in s 148) therefore these issues cannot be determined.

[26] The provisions of the proviso of s 148(1) of this LGA provides that '... no warrant of attachment shall be issued by the local authority unless it has served a notice ...' in which I am of the opinion that this provision is a mandatory provision where the provisions set forth in this proviso must be complied with.

[27] It is my view, the plaintiff failed to comply with the provision of the proviso to s 148(1) of the LGA in which the plaintiff failed to prove when was Form E served on the defendant. Without the delivery date stated in the notice that the plaintiff has to make payment of arrears within 15 days from the date of the notice then, the 15 days period cannot be determined.

[28] Section 148(2) of the LGA further provides that the warrant of attachment shall be executed by an officer of the local authority and that officer shall make an inventory of the property attached. I found that this provision is mandatory for compliance. From the affidavit evidence presented, there is no

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A evidence to show that there was any property attached by the plaintiff and further there is no evidence that the inventory of the property attached (if any) was made.

B **[29]** The plaintiff submitted that the property was not occupied and empty, so there is no necessity for the inventory to be made. However, the affidavit evidence showed that there is no evidence that the property was not occupied and vacant. With that, I find this submission is devoid of merit. The plaintiff fails to comply with the provision of s 148(2) of the LGA.

C **[30]** Section 148(1) of the LGA provides that in order to claim for the arrears, the local authority (the plaintiff) may issue a warrant of attachment in Form E and can seize under such warrant of any movable property belonging to the defendant. What is provided for in s 148(1) must be observed. This is in respect of seizure of movable property belonging to the defendant. There is no D evidence of seizure of movable property belonging to the defendant was seized by the plaintiff. In furtherance to that, there is no explanation given for the failure of the execution of the seizure of movable property belonging to the defendant.

E **[31]** In para 9 of the plaintiff's affidavit in support stated that the seizure of property failed because the property was locked. It should be noted that there is no proof that the execution of the seizure process has taken place. The plaintiff merely stated the seizure was not successful because the property was F locked. There was no evidence that the execution process of seizure was made, so the reason that the defendant's premise was locked was unfounded and not accepted by the court.

[32] Section 149 of the LGA provides that if the arrears and costs are not G paid by the owner (the defendant) within seven days from the date of the attachment, the movable property belonging to the owner (the defendant in this action) shall be sold by public auction.

[33] From the affidavit evidence submitted by the plaintiff, there is no H evidence that any movable property belonging to the defendant was attached for public auction pursuant to s 149 of the LGA by the plaintiff for arrears of assessments, fines and costs owed by the defendant to the plaintiff.

[34] While s 151(1) of the LGA provides that if the arrears cannot be I recovered in the manner provided in s 148, then the plaintiff may apply to the registrar of the High Court (if the application is made) order the attachment and sale for the arrears that have accrued. Attachment and sale can be done by the registrar of the High Court pursuant to O 31 of the Rules of Court 2012 and this is the sale of immovable properties in holding by the defendant.

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Section 151: Attachment and sale of holding.

1) If the arrear cannot be recovered in the manner provided in section 148 it shall be lawful for the registrar of the High Court upon application made by the local authority, or by any officer of the local authority authorised by the local authority in that behalf, to order the attachment and sale of the holding or holdings in respect of which the arrear has accrued.

2) Such attachment and sale may be effected in the manner provided by the law relating to civil procedure for the execution of a decree by attachment and sale of immovable property.

3) The Registrar of the High Court shall, from the proceeds of sale, provide first for the costs of attachment and sale, then for payment to the local authority of the amount of the arrear, together with interest thereon at the rate of six per centum per annum and costs, and in the event of there being any surplus remaining the Registrar shall, if he is satisfied as to the right of any person claiming such surplus, pay the amount thereof to him, and if he is not so satisfied, shall place the amount on deposit in the Treasury to be held in trust for the person who may ultimately succeed in establishing his claim thereto.

4) The local authority may in its discretion refrain from seizing and selling, or may release from attachment, any property lawfully seizable under section 148 where such property is the property is the property of the occupier, being a tenant, of the holding or of a person not liable to pay an arrear due in respect of such holding.

5) Where the property is the property of a tenant-occupier, the local authority shall refrain from seizing and selling or shall release from attachment such property:

Provided that the tenant-occupier pays to the local authority the rent of such holding as it falls due until the arrear is satisfied or until the termination of his tenancy and in any such case, notwithstanding anything contained in subsection (1), such holding may be attached and sold.

6) The amount of any rent paid by a tenant-occupier to the local authority under the provisions of subsection (5) may be deducted by such tenant-occupier from the next and following payments of rent to the owner of the holding.

[35] The plaintiff failed to comply with the provisions of s 148 of the LGA, hence it is premature for the plaintiff to file an originating summons (encl 1) against the defendant.

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A CONCLUSION

[36] For the reasons above, it can be concluded that the provisions of ss 148 and 149 has to be complied with by the plaintiff first and then with the provisions of s 151, if the plaintiff could not recover the arrears as provided for in s 148, then the plaintiff can make an application for the auction of property within the jurisdiction against the defendant and the property may be sold by public auction pursuant to O 31 of the Rules of Court 2012.

[37] I find that the plaintiff failed to comply with the provisions of ss 148 and 149 of the LGA which should be read in conjunction with s 151 of the LGA.

[38] Based on all the above reasons, the application is therefore dismissed and no order as to cost.

Application dismissed with no order as to costs.

Reported by Kohila Nesan